

Application Number 10/691,917

Amendment in response to Office Action mailed July 9, 2007

REMARKS

This Amendment is responsive to the Office Action dated July 9, 2007. Applicant has amended claims 1, 7, 19, 38, 42, 55 and 56. Claims 1, 5-19, 23-38, and 42-56 remain pending.

Claim Rejection Under 35 U.S.C. § 102

The Office Action rejected claims 1, 6, 8-13, 19, 23, 27-30, 35, 36, 38, 43-46, 50, 52, and 54-56 under 35 U.S.C. § 102(b) as being anticipated by Meadows et al. (U.S. 6,381,496, hereinafter "Meadows"). Applicant respectfully traverses the rejection, particularly to the extent it is considered applicable to the claims as amended. Meadows fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b), and additionally provides no teaching that would have suggested the desirability of modification to include such features.

As amended independent claim 1 recites a method comprising "defining an event based on the monitoring of the sensor output, monitoring therapy delivered by a medical device during occurrence of the defined event, and generating therapy information based on the monitoring of the therapy." Independent claims 12, 38 and 56 have been amended to recite similar limitations. Claim 55 depends from independent claim 1, and has been amended such that each of these functions is performed by an implantable medical device. As described in Applicant's specification, some embodiments according to these claims may automatically learn events and the appropriate therapy for the events by monitoring sensor outputs and monitoring delivered therapy, and then subsequently detect the thus learned events and provide the learned therapies in response to detection of the learned events. Meadows fails to teach or suggest these requirements of Applicant's claims as amended.

According to Meadows, a sensor is configured to sense an event¹. As soon as the event is detected by the sensor, a microcontroller responds by directing the memory access control circuit to retrieve the appropriate OPS (operational parameter set) from the memory table and load it into the control register². Meadows teaches that events, e.g., threshold sensor values, are

¹ Meadows, col. 17, lines 61-62

² Meadows, col. 18, lines 8-12

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“prescribed,” i.e., programmed by a physician.³ A user, i.e., and physician or patient, is allowed to program an OPS.⁴

In other words, the Meadows system is pre-programmed to recognize certain events, and deliver therapy according to an operational parameter set (OPS) that was programmed for the event. This teaching of Meadows is contrary to the requirements of Applicant's claims as amended. Independent claims 1, 19, 38, and 56 each require defining an event based on the monitoring of the sensor output, and generating therapy information based on the monitoring of the therapy. “Prescribing” or pre-programming sensor events and OPS's, as taught by Meadows, is entirely different than defining events and associating therapy based on monitoring of sensor outputs and delivered therapy. Furthermore, Meadows does not remotely suggest that such prescribing is performed by an implantable medical device. As such, Meadows fails to teach the requirements of amended claims 1, 19, 38, 55 and 56.

Meadows also fails to teach, “monitoring therapy delivered by a medical device during occurrence of the defined event” as substantially recited in independent claims 1, 19, 38, and 56. According to the teachings of Meadows, the therapy delivered by a medical device is not monitored; the therapy is merely delivered. The only monitoring that occurs is insuring that the OPS parameters do not violate pre-defined values that may be detrimental to the patient. In Meadows, the therapy is not monitored during the occurrence of the defined event. In accordance with claims 1, 19, 38, and 56, the therapy is monitored during the occurrence of the defined event. As such, Meadows fails to teach, monitoring therapy delivered by a medical device during occurrence of the defined event, as substantially recited in independent claims 1, 19, 38, and 56.

Meadows fails to teach each and every element of independent claims 1, 19, 38, and 56 and as such fails to make a prima facie case for rejection under section 102(b). Applicant respectfully requests withdrawal of the rejection for claims 1, 19, 38, and 56. Applicant respectfully requests withdrawal of the rejection for dependent claims 6, 8-13, 23, 27-30, 35, 36, 43-46, 50, 52, 53-55 in so far as they are dependent upon allowable independent claims.

³ Meadows, col. 3, lines 29-35 and col. 17, line 57 – col. 18, line 8.

⁴ Meadows, col. 4, lines 16-18

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Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 5, 7, 14-18, 24-26, 31-34, 37, 42, 47-49, 51, and 53 under 35 U.S.C. 103(a) as being unpatentable over Meadows et al. (U.S. 6,381,496) in view of knowledge known in the art. Applicant respectfully requests withdrawal of the rejection for dependent claims 5, 7, 14-18, 24-26, 31-34, 37, 42, 47-49, 51, and 53 in so far as they are dependent upon allowable independent claims 1, 19, 38, and 56 (see above).

Furthermore, Applicant does not acquiesce in any of the assertions that the features recited by these dependent claims were well known at the time of Applicant's invention. For example, Applicant does not agree that it was well known to define an event by recording the output of a sensor over time, as recited by claims 7, 26 and 42, at the time of Applicant's invention. As other examples, Applicant does not agree that it was well known to present a defined event to a clinician as diagnostic data or as a marker in a histogram, or to receive a command from a user to enter a learning mode, as recited by claims 16-18, 32, 33, 37, 48, 49, 51 and 53. Moreover, even if such features were well known, Applicant respectfully suggests that it would not have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the Meadows system to incorporate such features for the vague and general reasons stated in the Office Action.

Applicant respectfully requests that any subsequent Office Action include a citation to a teaching of these features in the prior art and a detailed explanation of the reasons a person of ordinary skill in the art would have considered it obvious to incorporate such features into the Meadows system, or withdrawal of these rejections.

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CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

10-9-07

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